NG CHEE KEONG & ORS.

v.

LEMBAGA LETRIK NEGARA & ANOR.

HIGH COURT MALAYA, KUALA LUMPUR
LIM BENG CHOON J
[CIVIL SUIT NO. S7-21-86 OF 1989]
20 DECEMBER 1990

LAND LAW: *Compulsory acquisition - Land transferred and registered - Allegation of trespass - No cause of action - Land Acquisition Act 1960, s. 8.*

CIVIL PROCEDURE: *Striking out application - Reasonable cause of action - Restrictions on documents which can be referred to by the parties - Writ action - Validity to compulsory acquisition proceeding - Rules of the High Court 1980, O. 18 r. 19 - Specific Relief Act 1950, s. 8(3).*

The plaintiffs (executors of a deceased estate) allege that the 1st and 2nd defendant LLN and the Government of Malaysia, D1 and D2 respectively, had in 1960 - 1962, into land belonging to the estate of L. D1 had entered into negotiations with L's family for acquisition of portion of the land. Although an agreement was not executed and compensation was not paid, D1 and D2 entered into the land and built an access road between Ringlet and Tanah Rata; this road was continued to be used as an access to and from Tanah Rata. The plaintiffs are claiming for compensation and loss of income because of the clearing of the tea bushes for the purpose of the building of this access road.

The defendants claim that negotiations had been entered into whereby Madam L had consented to the acquisition of the said portion; D2 subsequently acquired the land in 1972 and paid a certain sum as compensation to the Assistant Registrar of the High Court. They also contend that the plaintiff's claim was time barred. The defendant's application to have the summons struck out was dismissed by the Senior Assistant Registrar; hence this appeal by the defendants.

Held:

[1] D1, in his application for striking out, could not refer to the affidavit of J (as to the compulsory acquisition of the said portion) as he (D1) was claiming that the statement of claim did not disclose any cause of action, the only documents that can be referred to are the pleadings of the parties which must show that the plaintiffs cause of action is obviously bad and almost incontestably bad.

[2] As the said portion was compulsorily acquired and ownership had been transferred to D1 and duly registered the plaintiffs' cause of action which was anchored solely on trespass cannot in any way be sustainable.

[3] (a) The plaintiffs' reply to join issue with the defendants defence of the trespass does not raise a new cause of action.

(b) The plaintiffs were precluded from challenging the validity of the acquisition by a writ of action because under the provisions of the land acquisition Act the only matters that can be litigated by the Court are limited to matters as prescribed in Part V of the said Act.

(c) Under s. 68 of the Act, the plaintiff cannot ask for compensation at market value and loss of income which amounts to bringing a suit to set aside an award made by the appropriate authority.

[4] Section 8(3) of the Specific Relief Act 1950 fortifies the proposition that a writ action cannot be brought to challenge the validity of a compulsory acquisition proceeding.

[Defendants appeal allowed.]

Case referred to:
Wenlock v. Moloney [1965] 1 WLR 1238

Legislation referred to:
Land Acquisition Act 1960, ss. 37, 68
Rules of the High Court 1980, O. 18 r. 19
Specific Relief Act 1950, s. 8(3)

For the plaintiffs - N. Rajendra; M/s. Azman, Davidson & Co.
For the 1st defendant - Nor Azmi; M/s. Bakar, Khalil & Partners

JUDGMENT

Lim Beng Choon J:

This is an appeal by the 1st defendant and 2nd defendant against the decision of the Senior Assistant Registrar of this Court (the SAR) who had dismissed with costs the application of the defendants to strike out the statement of claim of the plaintiffs and to dismiss this action instituted by the plaintiffs.

The writ in this action was obtained by the plaintiffs on 16 March 1989 and in their statement of claim accompanying the writ, they alleged *inter alia* that both the 1st and 2nd defendant, namely the Lembaga Letrik Negara and the Government of Malaysia, through their agents and/or servants, had, in or around the period 1960 to 1962, entered into a portion of the land belonging to the estate of Lim Oa (deceased). The said portion of the land formed part of the land field under Lot 452 Mukim of Ringlet, District of Cameron Highlands belonging to the estate of Lim Oa (deceased) of which the plaintiffs are suing as personal representatives of the estate. Prior to the entry representative of the 1st defendant had entered into negotiations with the family of Lim Oa (deceased) for the acquisition of that portion of the land. However, no agreement was executed and no compensation was paid. The defendants entry into the portion of the land and the building of the access road between Ringlet and Tanah Rata upon the said portion therefore constituted a trespass of the deceased's property. Further the continued use of the road as an access to and from Tanah Rata and Ringlet constituted a continuing trespass. The particulars of act of trespass were given as (a) the defendants' encroachment upon the said portion of the land and (b) the defendants had cleared tea-bushes which were growing on the said portion of the land and which was a source of income to the deceased and her family. By reason of the defendants' trespass and improper acquisition of the said portion of the land the plaintiffs had suffered losses and they therefore claimed for:

(a) compensation at market value for the new area (?) (sic) Lot 405.

(b) Loss of income because of the clearing of the tea-bushes from the time of the defendants' improper entry into the land to date of judgment.

(c) Interest.

(d) Costs.

(e) Such other reliefs as this Honourable Court deems fit.

After entering appearance the 1st defendant filed its statement of defence in which it denied that the portion of land comprising approximately 13 acres 3 roods belonged to the estate of Lim Oa (deceased). The 1st defendant, however, admitted that it did enter negotiation with Madam Lim Oa while she was alive and that the said Madam Lim Oa consented to the acquisition of the portion of the land and the consent was made in writing (in her own work) for the benefit of the country as a whole. However as Madam Lim Oa and/or her agent failed to respond to the several invitations to enter into further negotiation the 1st defendant apparently "enquired" with the officers of the Cameron Highland Land Office to acquire an area of 7 acres 1 rood and 2 poles of the land held under Lot 452. Steps were apparently duly taken by the government to acquire that area of land under the Land Acquisition Act 1968 and the acquisition was duly gazetted in the Warta Kerajaan Negeri Pahang dated 6 June 1972 and a compensation of RM5112.50 was paid in the name of Penolong Pendaftar Mahkahmah Tinggi, Raub as a result of which the ownership of the said subdivided portion was transferred to the 1st defendant *vide* Title Document HS (D) 841, Lot PT 405. By reason of the aforesaid acquisition the 1st defendant did not and is not committing trespass and the allegations of the plaintiffs regarding encroachment into the portion of the land belonging to the estate of Lim Oa (deceased) and the losses suffered by the deceased and her family were categorically denied. Further and in the alternative the 1st defendant contended that the plaintiffs' claim was time barred.

In their reply to the 1st defendant's' statement of defence, the plaintiffs denied that they were ever invited to enter into further negotiations with the 1st defendant nor were they ever given any notice of any enquiries by the officers of the Cameron Highlands Land Office concerning the acquisition proceeding that were carried out in respect of the said land. Therefore the plaintiffs averred that as a result of the failure to give notice and the lack of compliance or non-compliance with the proper procedure under the Land Acquisition Act 1960 the acquisition of the said area of 7 acres 1 rood and 2 poles was null and void.

The 2nd defendant, the government of Malaysia, after entering appearance also filed its statement of defence in which it averred:

(a) that the land in question had been legally acquired by the 1st defendants;

(b) that the access road was not maintained by the 2nd defendant;

(c) that the 2nd defendant should not have been made a party to the suit.

Further and in the alternative the 2nd defendant averred that the plaintiffs' claim was statute barred. When the plaintiffs filed in their summons-for-directions the 1st defendant had indicated that it would be making an application at the hearing of the plaintiffs' summons to have the said summons struck out and this action be dismissed under O. 18 r. 19 of the Rules of the High Court 1980 (the RHC). However when the SAR dismissed the application of the defendants to strike out the action, she also gave directions pursuant to the plaintiff's summons-for-directions as to the conduct of the proceeding.

In their summons-in-chambers dated 21 August 1989 to strike out the plaintiffs' statement of claim under O. 18 r. 15 (encl. 13) of the RHC or under the inherent jurisdiction of the Court the grounds relied on by the defendants are:

(a) it discloses no reasonable cause of action;

(b) it is scandalous, frivolous or vexatious;

(c) it is otherwise an abuse of the process of Court.

In his submission, Counsel for the 1st defendant contended that the cause of action relied on by the plaintiffs was that both the defendants were and still are trespassing in the portion of land as averred in the statement of claim. He then argued that the said portion of land no longer belonged to the plaintiff the estate of Lim Oa (deceased) since it had been compulsorily acquired by the government. The therefore referred me to the affidavit of Jaafar bin Jusoh an officer of the 1st defendant who was authorised to affirm the affidavit on 18 August 1989 (encl. 10A). I do not think I could allow Counsel for the defendant to refer to the said affidavit when he was firstly relying on ground (a) of the defendants' summons-in-chambers namely that the statement of claim did not disclose any cause of action. The only documents that can be referred to are the pleadings of the parties which must show that the plaintiffs' cause of action is "obviously bad and almost incontestably bad" - see *Wenlock v. Moloney* [1965] 1 WLR 1238. However that may be three factors are indisputable and they are that:

(i) The cause of action of the plaintiffs are solely anchored on the tortious act of trespassing on the part of the defendants on the portion of the land in question.

(ii) The portion of the land had been duly and compulsorily acquired by the government under the Land Acquisition Act 1960.

(iii) As a result of the compulsory acquisition under the Land Acquisition Act, ownership of the portion of land in question was duly transferred to the 1st defendant and duly registered *vide* title HS(D) 841 Lot 405.

It is beyond any doubt, based on the indisputable factors adumbrated above, that the plaintiffs' cause of action anchored solely on trespass cannot in any way be sustainable. It is true that the plaintiffs in their reply to the 1st defendant's statement of defence said that there had been non compliance with the proper procedure under the Land Acquisition Act 1960. The plaintiffs' assertion in their 'reply' to join issue with the defendants upon their defence that they were not trespassing on the portion of the land in question does not raise a new cause of action. In any case if the plaintiffs were challenging the validity of the acquisition they are precluded from doing so by a writ action because under the provisions of the Land Acquisition Act the only matters that can be litigated by the Court are limited to matters as prescribed in part V of the said Act namely:

(a) the measurement of the land;

(b) the amount of compensation;

(c) the person to whom it is payable;

(d) the apportionment of the compensation (see s. 37 of the said Act).

More importantly s. 68 of the said Act which reads:

> No suit shall be brought to set aside an award or apportionment under this Act.

bars the plaintiffs from asking for compensation at market value and loss of income which amounts to bringing a suit to set aside the award of RM5112.50 made by the appropriate authority.

Apart from the provisions of the Land Acquisition Act which as I have said, precludes the plaintiffs from instituting this action, s. 8(3) of the Specific Relief Act 1950 which reads:

> No suit under this section (recovery) of immovable property) shall be brought against any government in Malaysia." (Words in parenthesis are mine).

Section 8(3) of the Specific Relief Act 1950 fortifies the proposition that a writ action cannot be brought to challenge the validity of a compulsory acquisition proceeding. In whatever ways one may consider the case for the plaintiffs, one can have no doubt that firstly there is no cause of action raised in the statement of claim and (2) even if there is a cause of action the plaintiffs are in fact asking for reliefs which this Court has no power to grant.

Under the circumstances there is no need for me to consider grounds (b) and (c) as set out in the summons-in-chambers of the defendants dated 21 August 1989 (encl. 13). I therefore allow the appeal of the defendants and reverse the decision of the SAR with costs. The summons-for-direction filed by the plaintiffs and the orders made by the SAR pursuant to the summons-for-directions are also struck out.

Also found at [1991] 1 CLJ 567